

**FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA**  
**(DIVISION 2)**

**Pogula v Minister for Immigration, Citizenship and Multicultural Affairs**

**[2023] FedCFamC2G 694**

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| File number(s):            | MLG 2327 of 2018                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Judgment of:               | <b>JUDGE SYMONS</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Date of judgment:          | 10 August 2023                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| Catchwords:                | <b>MIGRATION</b> – Student visa – decision of the Administrative Appeals Tribunal – where Tribunal found primary applicant did not meet Public Interest Criterion 4020(1) based on the submission of a bogus document with the visa application –where applicants argue document not a bogus document within the meaning of s 5 of the <i>Migration Act 1958</i> (Cth) and that Tribunal misunderstood or failed to consider the explanation offered for its production – no jurisdictional error – application dismissed with costs |
| Legislation:               | <i>Migration Act 1958</i> (Cth) ss 5, 65, 375A<br><i>Migration Regulations 1994</i> (Cth) Schedule 2, cl 500.214, 500.217; Schedule 4, cl 4020                                                                                                                                                                                                                                                                                                                                                                                       |
| Cases cited:               | <i>Minister for Immigration and Border Protection v SZMTA</i> (2019) 264 CLR 421; [2019] HCA 3<br><i>Singh v Minister for Immigration and Border Protection</i> (2018) 261 FCR 556; [2018] FCAFC 52<br><i>Trivedi v Minister for Immigration and Border Protection</i> (2014) 220 FCR 169; [2014] FCAFC 42<br><i>Vyas &amp; Anor v Minister for Immigration &amp; Anor</i> [2012] FMCA 92                                                                                                                                            |
| Division:                  | Division 2 General Federal Law                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| Number of paragraphs:      | 62                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Date of last submission/s: | 1 August 2023                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Date of hearing:           | 1 August 2023                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Place:                     | Melbourne                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |

|                                         |                                     |
|-----------------------------------------|-------------------------------------|
| First Applicant:                        | In person                           |
| Second Applicant:                       | In person                           |
| Solicitor Advocate for the Respondents: | Mr T Creedon                        |
| Solicitor for the Respondents:          | The Australian Government Solicitor |

## **ORDERS**

**MLG 2327 of 2018**

### **FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA (DIVISION 2)**

**BETWEEN: ROJA POGULA**  
**First Applicant**

**RAM REDDY SANTOSHAM**  
**Second Applicant**

**AND: MINISTER FOR IMMIGRATION, CITIZENSHIP AND**  
**MULTICULTURAL AFFAIRS**  
**First Respondent**

**ADMINISTRATIVE APPEALS TRIBUNAL**  
**Second Respondent**

**ORDER MADE BY: JUDGE SYMONS**

**DATE OF ORDER: 10 AUGUST 2023**

### **THE COURT ORDERS THAT:**

1. The application for judicial review filed on 7 August 2018 be dismissed.
2. The applicants pay the first respondent's costs in the fixed amount of \$6,000.

Note: The form of the order is subject to the entry in the Court's records.

Note: The Court may vary or set aside a judgment or order to remedy minor typographical or grammatical errors (r 17.05(2)(g) *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2021* (Cth)), or to record a variation to the order pursuant to r 17.05 *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2021* (Cth).

## REASONS FOR JUDGMENT

### JUDGE SYMONS:

#### INTRODUCTION

1 By an application filed on 7 August 2018 the applicants seek judicial review of a decision of the second respondent (the **Tribunal**) made on 31 July 2018. The Tribunal affirmed a decision of a delegate of the first respondent (the **Minister**) to refuse the applicants a Student (Temporary) (Class TU) (Subclass 500) visa (the **visa**) under s 65 of the *Migration Act 1958* (Cth) (the **Act**). The Minister opposes the application. The Tribunal entered a submitting appearance and has not participated in the proceeding.

#### BACKGROUND

2 The first applicant is a citizen of India and the primary applicant for the visa. The second applicant is the husband of the first applicant. The application for the visa was lodged by the first applicant on 3 February 2017 with the assistance of a registered migration agent (CB 12-28). The second applicant was included as an accompanying family member in the application.

3 The visa application attached, amongst other documents, a copy of a letter from the Canara Bank dated 31 January 2017 (the **Canara Bank Letter**) that purported to show that the first applicant had been granted a loan for the purpose of pursuing a Master of Engineering (Telecommunications) at Melbourne Institute of Technology (CB 45-46).

4 On 13 March 2017, the (then) Department of Immigration and Border Protection requested that the first applicant provide more information including, “*evidence of funds to support yourself and all family unit members during the first 12 months of your proposed study and stay in Australia, or during your entire proposed study and stay in Australia if it is less than 12 months*”. The request noted that “*a loan guarantee letter is not sufficient evidence as it does not show current access to funds. Please provide alternative financial evidence that shows current access to funds*”. The request noted that the first applicant would need to demonstrate that she had access to \$36,500 AUD (CB 81).

5 On 29 March 2017, the first applicant (through her registered migration agent) provided information in response to the request for more information. This included under the heading “Financial capacity”, what was described as “*loan letter and Bank statement showing funds*”

*for more than AUD 55,000 along with payment transfer receipt which clearly shows funds are accessible to applicant whenever required. Also, attached are bank statement from applicant's account in Australia which confirms money received and account details in India which show money debited & transferred to her in Australia” (CB 83 and 87-91).*

- 6 On 29 May 2017, the Department sent the first applicant an invitation to comment on adverse information received (CB 99-102). The information was described as follows:

*The Department has conducted checks to confirm the information that you provided in your application. During this process we have received unfavourable information which does not support your application.*

*With your application, you attached the following documents to your online immigration account:*

*Loan letter (1).jpg*

*Loan Letter (2).jpg*

*These documents contained a copy of a letter from the Canara Bank dated 31 January 2017 purporting to show that you were granted a loan of INR 230,000 for the purposes of pursuing a Master of Engineering (Telecommunications) at Melbourne Institute of Technology.*

*The Department referred the above documents to the Australian High Commission's Case Assurance Section in New Delhi in order to assess their genuineness.*

*The Case Assurance Section subsequently advised the Department that its investigation disclosed the following:*

- That it had received information that the Canara Bank had not issued the documents you provided.*

- 7 The Department letter informed the first applicant that the information was relevant because it tended to show that the Canara Bank Letter was a bogus document within the meaning of s 5(1) of the Act and its provision in connection with the application for the visa might engage the Public Interest Criterion (**PIC**) contained in clause 4020 of Schedule 4 to the *Migration Regulations 1994* (Cth) (the **Regulations**) and result in the refusal of the visa to both applicants.

- 8 The first applicant was invited to provide, within 28 days of deemed receipt of the letter, comment on the adverse information and to specify if she believed there were any compelling circumstances affecting the interests of Australia, or compassionate or compelling circumstances affecting the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen, to justify the waiver of any or all of PIC 4020(1) and (2) to justify the granting of the visa.

- 9 On 23 June 2017, the first applicant appointed a new migration agent (CB 106-108).
- 10 On 26 June 2017, the first applicant provided a written response to the invitation to comment on adverse information (CB 111-115). The response included that:

*...I have submitted the normal agreeable letter (pre approval letter) from the canara Bank which is Toichowki branch. But this is not given by canara bank, it was given by Loan broker. When we submit the documents he formally has generated a letter how much I am entitled for. That is what it is saying. Here Immigration has contacted the bank and made it clear that there are no funds, it is true Bank would not have data as loan wasn't approved. Also my agent has not advised me to provide one.*

*It is look like as huge miscommunication happened in between agent and me. Also Immigration has misunderstood in my matter.*

...

*When I have communication with [the applicants' first migration agent] I clearly said that I don't have loan approval but canara bank going to grant the loan which has been submitted. Then I have received the query from [the applicants' first migration agent] regarding the access to funds and I have given the evidence. Here, I wonder I did not submit any documents to immigration as I do have loan from Canara bank so how come Immigration will find the loan as bogus document. And also I never made any request to agent to submit this document to Immigration. This is total miscommunication happened with the agent.*

...

- 11 By her response, the first applicant also requested that the Department consider a loan which she had uploaded on 26 June 2017 and which she identified as “*the right one which can be investigated by the department if needed*”. This document also had the appearance of being issued by Canara Bank (CB 109-110).
- 12 On 27 June 2017, a delegate of the Minister refused to grant the applicants the visa on the basis that they were not satisfied that the first applicant met PIC 4020 and that accordingly the first applicant was not able to satisfy clause 500.217 of Schedule 2 to the Regulations. The decision of the delegate involved a finding that the first applicant had given or caused to be given a “bogus document” within the meaning of s 97 of the Act (this being the Canara Bank Letter) and that no information had been submitted that indicated the first applicant was seeking a waiver of PIC 4020 (CB 125). The inability of the first applicant to satisfy the criteria for the grant of the visa meant that the second applicant was also unable to satisfy the criteria for the grant of the visa as a member of the first applicant’s family group (CB 127).
- 13 On 4 July 2017, the applicant applied to the Tribunal for a review of the delegate’s decision (CB 128-130).

- 14 On 19 July 2017, a delegate of the Minister for Immigration and Border Protection and a delegate of the Secretary of the Department issued to the Tribunal a certificate and notification regarding disclosure of certain information under s 375A of the Act (**non-disclosure certificate**) (CB 116). The Minister acknowledges that the existence of the non-disclosure certificate was not disclosed to either applicant by the Tribunal.
- 15 On 27 June 2018, the Tribunal invited the applicants to attend a hearing on 31 July 2018 and requested that the applicants provide, within seven days, any documents they intended to rely on to establish that they met the criteria for the visa (CB 139-140).
- 16 On 28 June 2018, the applicants' migration agent submitted to the Tribunal the completed and signed "*Response to hearing invitation – MR division*" form, together with supporting evidence and a written submission (CB 143-165). The written submission repeated the applicants' claim that the Canara Bank Letter was a pre-approval letter only and made the following additional claims and arguments:
- (a) the letter was given to the first applicant by her parents in India;
  - (b) the first migration agent was unsure about the financial requirements for the processing of a student visa for an individual from India;
  - (c) the first applicant was confused by her agent and friends as to the evidentiary requirements for the visa;
  - (d) the first applicant did not instruct the first migration agent to upload the documents because of this confusion;
  - (e) the first applicant had no participation in the gathering of the document as it was given by a broker to her parents;
  - (f) the delegate should have requested the applicant submit "full financial documents" instead of or before referring the Canara Bank Letter for an integrity check. In failing to do so, the delegate misconstrued and misapplied the relevant legislation in their assessment of the visa application;
  - (g) the delegate took irrelevant considerations into account when they applied PIC 4020. The delegate was not satisfied with the first applicant's justification and this also constituted a legal error;
  - (h) the first applicant provided new evidence explaining the mistake made by her former migration agent.

17 On 31 July 2018, the applicants appeared before the Tribunal to give evidence and present  
arguments with the assistance of their migration agent and an interpreter in the English and  
Telugu languages (CB 166-167).

### **THE DECISION OF THE TRIBUNAL**

18 The record of hearing created by the Tribunal records that the hearing commenced at 1.44 pm  
and was completed at 2.37 pm with an oral decision made at that time (CB 166-168).

19 On 21 August 2018 following a request from the applicants, the Tribunal issued a written  
statement of decision (CB 179- 181).

20 At [5] of its written statement, the Tribunal identified that the issue on the review was  
whether the first applicant met the requirements of PIC 4020(1).

21 At [6] of its written statement, the Tribunal referred to what it described as the “*documents of  
concern*” and noted that while the documents had been identified in the decision of the  
delegate as “Loan letter 1” and “Loan letter 2”, the letter on file was one dated 31 January  
2017.

22 At [7] the Tribunal noted that an investigation conducted on 22 May 2017 into the Canara  
Bank Letter resulted in a finding that the document was non-genuine and at [8] recorded that  
when invited to comment, the first applicant’s explanation to the delegate was that the  
document provided was a pre-approval letter provided not by the bank, but by a loan broker.

23 At [9] the Tribunal identified that its role on the review was to consider the evidence and  
decide whether the first applicant had provided a document that was non-genuine and  
therefore did not satisfy PIC 4020(1) and if such a finding was made, consider whether  
prescribed circumstances existed that would allow for the waiver of PIC 4020(1).

24 The Tribunal acknowledged receipt of the written submission (see [16] above) and  
summarised its content. The Tribunal noted that at hearing, the first applicant had repeated  
the claim that the broker had given the Canara Bank Letter to her father and persisted with  
the characterisation of the letter as a “pre-approval letter” which was not a “bogus  
document”.

25 The Tribunal recorded that it was satisfied that despite the arguments to the contrary found in  
the applicants’ written submissions there was no error in the decision of the delegate. It  
reasoned (at [14]-[16]) (CB 181) as follows:



14. In support of your application you provided a document on Canara Bank letterhead dated 31 January 2017 which states the bank is agreeable to grant an Education Loan of 23 Lakhs for you to pursue a Master of Engineering. It contains all the normal details of a loan: interest rates, security, repayments, et cetera and it is under the signature of the branch manager and sealed by Canara Bank.
15. The Canara Bank advised that they did not issue this document. As such, the Tribunal finds it is irrelevant whether it is a pre-approval letter or whatever. It is a document not provided by the bank that purports to be provided by the bank.
16. The Tribunal therefore finds this is not a genuine document and therefore finds you have provided a non-genuine document and therefore do not satisfy PIC 4020.

26 The Tribunal acknowledged that a failure to meet PIC 4020(1) might be overcome through a waiver in prescribed circumstances but noted that both the first applicant and her agent had told the Tribunal that there were no such circumstances (CB 181 [18]). The Tribunal affirmed the decision of the delegate.

### **PROCEEDINGS IN THIS COURT**

27 The Minister submits and I accept that the application for judicial review filed on 7 August 2018 can be understood as advancing the following grounds:

2. The Tribunal misunderstood and misapplied the criterion 500.217 of Part 500 of Schedule 2 of the Migration Regulations 1994 in respect of the bogus document defined under s 5 (paragraphs 3 – 6 of the application);
3. The Tribunal failed to consider the first applicant's study progress (paragraphs 7 and 9 of the application);
4. The Tribunal erred in failing to consider cl 500.214 of the Regulations and the further financial documents provided by the applicant (paragraph 8 of the application).
5. The Tribunal did not give sufficient weight to the first applicant's claims/explanation regarding the document's status as a pre-approval letter and in doing so, has not afforded the applicant procedural fairness (paragraphs 10-11 of the application).

28 On 6 February 2019, a Registrar of this Court made orders progressing the matter to final hearing. They included (in respect of the applicants) that by 4 July 2023, they file and serve written submissions. The applicants did not file any material responsive to this order.

29 On 18 July 2023, the Minister filed written submissions. There is evidence that these written submissions were served on the applicants on the same day using the applicants' nominated

email address. The court book (prepared by the Minister’s lawyers) was served on the applicant by pre-paid express post sent to the address for service nominated in the application on 14 February 2019. The court book was also sent to the applicants on the same day using their nominated email address. The applicants confirmed their receipt of both documents at the final hearing on 1 August 2023.

## **THE ARGUMENTS OF THE PARTIES**

### **The applicants**

- 30 The applicants were invited to make oral submissions directed at the arguments distilled from their application. I also invited the applicants to identify, more generally, any aspect of the Tribunal decision that they considered to be made in error.
- 31 The second applicant told the Court that he wished to make submissions on behalf of himself and the first applicant. Although an interpreter in the English and the Telugu languages had been booked for the hearing and remained present throughout, the second applicant told the Court that he did not require the assistance of an interpreter and proceeded to engage with the Court without any evident difficulty.
- 32 The second applicant told the Court that the Tribunal had failed to appreciate and to give weight to the explanation the applicants had provided concerning the genesis of the Canara Bank Letter and the circumstances in which it had been provided to the Department. The second applicant repeated the submissions made to the Tribunal that the Canara Bank Letter was simply a “pre-approval” loan letter procured by the applicants’ broker and provided to the Department without the applicants’ knowledge.
- 33 The second applicant, when directed to paragraph [7] of the application and the allegation that the Tribunal had failed to consider the first applicant’s study progress, told the Court that the Tribunal had not considered that the first applicant had already paid for one semester of fees but instead had been fixated on the “pre-approval letter”.
- 34 When directed to paragraph [8] of the application and the allegation that the Tribunal had not spent time to understand the situation and had been “harsh”, the second applicant told the Court that the Tribunal had not studied the applicants’ case, had not listened and had given the applicants’ “five minutes to explain”.

## **The Minister**

35 The Minister, who was represented by lawyer Mr Creedon, made submissions as follows.

36 First, the argument alleging misapprehension and/or misapplication of criterion 500.217 of Schedule 2 of the Regulations (as it concerned a “bogus document”) was without merit.

37 This was because cl 500.217(1) of the Regulations required (amongst other things) that the first applicant satisfy PIC 4020(1) which, in turn, required that there was no evidence before the Minister that the applicant has given, or caused to be given, to the Minister a bogus document or information that is false or misleading in a material particular in relation to the application for the visa.

38 Central to this case, “bogus document” is defined in s 5(1) of the Act and means a document that, in relation to a person, the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person;
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly.

39 It was clear from the Tribunal’s written statement of reasons that it had properly understood the definition of “bogus document” in s 5(1) of the Act including because it had considered the information from the Canara Bank that it had not issued the Canara Bank letter.

40 The Minister noted that the Tribunal had taken into account the explanations provided by the first applicant as to why the Canara Bank Letter had been provided to the Department, being:

- (a) The Canara Bank Letter was a pre-approval letter, not a loan letter (refer Reasons at [8]);
- (b) The Canara Bank Letter was provided by the first applicant’s parents (Reasons at [10]); and
- (c) The first applicant’s agent had submitted the letter to the Department without being directed to do so (Reasons at [12]).

41 The Tribunal did not accept the first applicant’s explanations and in particular found that it was irrelevant whether the Canara Bank Letter had been provided to the Department without

her knowledge, as claimed by the first applicant. The relevant fact, as the Tribunal pointed out, was that it was a document that purported to be issued by the Bank when this was not the case (Reasons at [15]).

42 The Minister submitted that the Tribunal's reasoning, which failed to exculpate the first applicant on account of her disavowal of knowledge of the Canara Bank Letter being provided to the Department, was consistent with authority to the effect that the requirement of PIC 4020(1) applies even where the document was provided by an applicant unknowingly or unwillingly: refer *Vyas & Anor v Minister for Immigration & Anor* [2012] FMCA 92, cited with approval by the Full Court in *Trivedi v Minister for Immigration and Border Protection* (2014) FCR 169 at [27] and *Singh v Minister for Immigration and Border Protection* (2018) 261 FCR 556 at [144(4)]. The Minister noted (as is the case) that the applicants had not made allegations that their migration agent acted fraudulently when making the application for the visa.

43 The Minister submitted that the Tribunal gave proper consideration as to whether PIC 4020 could be waived but found that there were no compelling or compassionate circumstances in support of a waiver. This conclusion was open to the Tribunal.

44 Second, as far as the applicants were critical of the failure of the Tribunal to consider the first applicant's study history and the requirements of cl 500.214 (this being the requirement to demonstrate genuine access to funds) this failure reflected the position that the Tribunal had first considered whether the first applicant satisfied cl 500.217 and having found that she did not, was not required to consider the first applicant's study history or satisfaction of cl 500.214 either as part of that inquiry or as part of an ulterior inquiry. The inability of the first applicant to satisfy PIC 4020(1) (and in turn cl 500.217) was fatal to her application.

45 The Minister, as model litigant, brought to the attention of the Court (including through its inclusion in the court book) that a non-disclosure certificate had been issued to the Tribunal and that the existence of the certificate had not been communicated to the applicants.

46 The Minister submitted however that this was a case that engaged with the principles identified in *Minister for Immigration and Border Protection v SZMTA* (2019) 264 CLR 421 and, in particular, the recognition by the High Court that a breach of procedural fairness in the case of an undisclosed notification would only be jurisdictional in circumstances where the failure to disclose could realistically have resulted in a different decision.

- 47 The Minister submitted that the failure to disclose in this case could not have altered the outcome of the review application. This was because the material covered by the non-disclosure certificate contained information related to the Department's referral of the Canara Bank Letter to its overseas post and the request that it conduct an assessment of its authenticity. The fact of and the outcome of the integrity check had been put to the first applicant for comment in the natural justice letter sent by the Department to the applicants on 29 May 2017. It had also been discussed in the decision of the delegate and was the subject of questions put to the first applicant at the Tribunal hearing prior to featuring in the Tribunal's decision. It was also the case that the applicants provided written submissions on the issue to the delegate and to the Tribunal.
- 48 In aid of this submission, the Minister relied upon an affidavit of Thomas Creedon affirmed on 17 July 2023 which annexed the material behind the non-disclosure certificate.
- 49 The Minister acknowledged that the reference by the applicants to the conduct of the Tribunal member during the hearing (refer [34] above) was capable of being understood as an allegation of actual or apprehended bias. The Minister noted that an allegation of this character must be distinctly pleaded and overcome the high bar required for its proof.
- 50 The Minister submitted that the written statement of reasons produced by the Tribunal suggested that the Tribunal member had considered the submissions made by the applicants (both in writing and orally at the hearing) and had demonstrated an engagement with the case and materials relied upon by the applicant.
- 51 The Minister acknowledged that while the hearing was brief (approximately one hour including the giving of an oral statement of reasons for decision), this reflected the confined nature of the dispositive issues and was not indicative of a failure by the Tribunal to impartially deal with the case that was before it.
- 52 I raised with the Minister's lawyer whether the reference by the applicants to the first applicant's study history should have been understood by the Tribunal as a matter or submission directed at establishing compassionate or compelling circumstances. Mr Creedon submitted that the Court should find that the issue of the first applicant's study progress had not been raised in terms of it being a compassionate or compelling circumstance. He made the further submission that the first applicant's studies would not, in any case, be a matter likely to be comprehended by PIC 4020(4).

## RESOLUTION

- 53 I am not persuaded that any of the matters identified by the applicants involve jurisdictional error in the decision of the Tribunal.
- 54 Turning first to the allegation that the Tribunal misapprehended and/or misapplied cl 500.217 appearing in Schedule 2 of the Regulations.
- 55 Clause 500.217 is one of a number of primary criteria that must be satisfied by at least one member of a family unit as a condition for the grant of a Subclass 500 student visa. Sub-clause 500.217(1) requires that the applicant satisfy public interest criteria 4001, 4002, 4003, 4004, 4010, 4013, 4014, **4020** and 4021.
- 56 Here the Tribunal was concerned with the ability of the first applicant to satisfy PIC 4020(1) which amongst other matters, precludes the giving of a “bogus document” to the Minister or an officer in relation to the application for the visa.
- 57 Although the applicants made submissions to the Tribunal that sought to challenge the character of the Canara Bank Letter as a “bogus document”, they acknowledged that the letter had not been produced by the Bank and that instead it had been created by the applicants’ agent. There was nothing therefore standing in the way of the Tribunal’s finding that the Canara Bank Letter was “a document not provided by the bank that purports to be provided by the bank” (Reasons at [15] CB 181) and therefore comprehended by the definition of “bogus document”.
- 58 Although the applicants disclaimed knowledge of the production of the Canara Bank Letter and its subsequent provision to the Department, in the absence of an allegation of fraud, the Tribunal was correct to proceed on the basis that the applicants were to be held responsible for the giving of the Canara Bank Letter to the Department in connection with the visa application. The authorities relied upon by the Minister elucidate the settled principle that in order to offend PIC 4020(1), a visa applicant need not be complicit in any falsehood.
- 59 I am also not persuaded that the Tribunal misunderstood the explanations provided by the applicants or their submissions directed at whether PIC 4020(1) was satisfied. Although brief, the Tribunal’s written statement of reasons contained a correct summary of the matters raised by the applicants in their written and oral submissions, including the central contention that the Canara Bank Letter was only a “pre-approval letter”.

60 Because the Tribunal identified the dispositive issue as whether the first applicant satisfied PIC 4020(1) it was not required to go on to consider whether the first applicant was able to satisfy cl 500.214 of Schedule 2 to the Regulations. The confined nature of the review likely also explains why the hearing before the Tribunal was of relatively short duration. I am not prepared to infer from this circumstance alone that the Tribunal acted peremptorily or with a mind not open to persuasion.

61 Finally, and for the avoidance of doubt, I accept the submission of the Minister that this is a case where despite the existence of the non-disclosure certificate not being brought to the attention of the applicants, the denial of procedural fairness was not material. The significance and purport of the material “behind the certificate” was identified for the applicants on at least two occasions prior to the Tribunal giving its oral decision and the applicants addressed the matter in submissions to the Department and to the Tribunal.

### **DISMISSAL**

62 For the reasons set out above I will make orders that the applicants’ application be dismissed and that the applicants pay the first respondent’s costs in the fixed amount of \$6,000.

I certify that the preceding sixty-two (62) numbered paragraphs are a true copy of the Reasons for Judgment of Judge Symons.

Associate:

Dated: 10 August 2023